

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JETSON R. CHESHER, and
BOBBIE SHIREMAN, and
JEFFREY R. CHESHER,

Plaintiffs,

v.

CHARLES A GIBSON and KITTIE
H. GIBSON (Husband and Wife),
and ROBERT W. GARRETSON and
MARY H. GARRETSON (Husband
and Wife), and ROBERT A.
GARRETTSON, and THEADORE
MELLOTTE, AND WANDA and/or
ELOISE MELLOTT (Husband and
Wife), and LEON BRUMAN and
MARILYN BRUNAM (Husband and
wife), and DAVID MARHER Jr., and
WILLIAM H. GREGORY, and (All
Section 25 historical-defendants) and
HALVERSON, APPELATE, AND
MCDONALD [Law Firm], and
FLYING Y HOMES OWNERSHIP
ASSOCIATION, and STATE OF
WASHINGTON, et al., and
DEPARTMENT OF WILDLIFE, and
YAKIMA COUNTY, et al.,

Defendants.

NO. CV-07-3072-RHW

**ORDER GRANTING MOTION TO
ALTER AND AMEND JUDGMENT
UNDER FRCP 59(E) AND
DISMISSING CASE WITHOUT
PREJUDICE**

Before the Court is Plaintiffs' Motion to Alter and Amend Judgment Under
FRCP 59(e) (Ct. Rec. 60). The motion was heard without oral argument.

On November 30, 2007, the Court entered an Order dismissing the case with
prejudice. The Court found that it did not have subject matter jurisdiction over the
claims because Plaintiff did not allege any federal claims and did not allege

**ORDER GRANTING MOTION TO ALTER AND AMEND JUDGMENT
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1 diversity jurisdiction.

2 Plaintiffs argue that the Court should have dismissed the case without
3 prejudice, relying on North Dakota law for support of their position. While North
4 Dakota law is not binding on this Court, under Ninth Circuit precedent, because the
5 Court did not reach the merits of Plaintiffs' claims, the Court should have
6 dismissed the action without prejudice. *See Herman Family Revocable Trust v.*
7 *Teddy Bear*, 254 F.3d 802 (9th Cir. 2001); *In Re Hunter*, 66 F.3d 1002 (9th Cir.
8 1995).

9 Accordingly, **IT IS HEREBY ORDERED:**

10 1. Plaintiffs' Motion to Alter and Amend Judgment Under FRCP 59(e)
11 (Ct. Rec. 60) is **GRANTED**.

12 2. The above-captioned case is **dismissed without prejudice**.

13 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
14 Order and forward copies to counsel.

15 **DATED** this 11th day of January, 2008.

16 *s/ Robert H. Whaley*

17 ROBERT H. WHALEY
18 Chief United States District Judge

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